

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3

4 MARIA B. GAUTIER-FIGUEROA

5 Plaintiff,
6 v.

7 BRISTOL-MYERS SQUIBB PUERTO RICO,
8 INC., et al.

9 Defendants.

Civil No. 11-1155 (SEC)

10 **OPINION AND ORDER**

11 Before the Court is plaintiff Maria Gautier-Figueroa’s (“Gautier”) motion to remand to
12 state court (Docket # 72). Because the Employee Retirement Income Security Act of 1974
13 (“ERISA”), 88 Stat. 829, as amended, 29 U.S.C. § 1001 et seq. is inapplicable, and there being
14 no other federal question here, Puerto Rico contractual law controls. Gautier’s motion,
15 therefore, is **GRANTED**. Consequently, to the extent that the Opinion and Order of June 20,
16 2011 in Gautier-Figueroa v. Bristol-Myers Squibb Puerto Rico, Inc., 792 F.Supp.2d 240 (D.P.R.
17 2011) is inconsistent with the conclusions set forth below, it is hereby **SET ASIDE**.

18 **Factual and Procedural Background**

19 What should have been a typical employee-against-employer state suit for breach of
20 contract has, unfortunately, taken an unpredictable turn into an arcane area of the ERISA
21 legislation. This case arises following Gautier’s filing of a complaint in state court against her
22 former employer, Bristol-Myers Squibb Puerto Rico, Inc. (“Bristol” or the “Company”),
23 alleging, among other related state-law claims, that Bristol had breached the “BMS Puerto Rico
24 Severance Pay and Release Agreement” (the “Severance Agreement”) by virtue of which she
25 waived all her claims against Bristol arising from her involuntary termination. Docket # 8-1, pp.
26

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 3 7-8.¹ A comprehensive recount of Gautier's factual and underlying allegations provides the
 4 context and background necessary to set the stage for the analysis.

 5 The 41 year-old Gautier began working for Bristol in 1998, and eventually reached the
 6 position of Director Parenteral O.S.D. & Packaging at Bristol's manufacturing plant in Manati,
 7 Puerto Rico. Docket # 59, ¶¶ 8-10. While she worked there, Gautier did well: her total salary
 8 with benefits totaled \$150,566 per year. Id., ¶ 11.

 9 But that all changed on May 5, 2010, when Bristol terminated her for no particular
 10 reason. Id., ¶ 11. At Gautier's termination meeting, Rosa Sanabria-Nazario, Bristol's Human
 11 Resources Director, provided her with a notice of termination (the "Notice of Termination"),
 12 a termination package comprised of several attachments, including the Severance Agreement
 13 she had to sign and deliver by May 19, 2010, the effective date of her termination. Id., ¶ 13.²
 14 The Company drafted and prepared such documents in their entirety, and according to the
 15 complaint, Sanabria told Gautier that in order to receive her severance benefits, she had to sign
 16 these documents, which were presented in terms of "take it or leave it." Id., ¶ 15. In pertinent
 17 part, the Notice of Termination provided:

 18 Your severance pay calculation appears on this attachment.
 19 Severance pay will be provided to you in accordance with the terms and
 20 provisions of the Bristol-Myers Squibb Company Puerto Rico, Inc.
 21 Severance Plan and Summary Plan Description (the Severance Plan). If you
 22 comply with the requirements described below, severance benefits will be
 23 paid to you at regular payroll intervals until the full benefit is paid. If you

 24 ¹ That action, filed in the Puerto Rico Court of First Instance, San Juan Superior Court was
 25 styled Maria B. Gautier Figueroa v. Bristol Myers Squibb Puerto Rico, Inc., et al., KAC2010-1552
 26 (803).

 27 ² The Notice of Termination included the following attachments: (1) a Severance Pay
 28 Worksheet; (2) the General Release; (3) a Certification of Employment Form; (4) a Summary of Benefit
 29 Coverages, a one-page document that explained her health benefits and COBRA; and (5) Vacation Pay
 30 Summary. Docket # 6-1, pp. 1-4.

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2 obtain new employment, however, the balance of any outstanding severance
3 payments that may be due will be paid to you in a lump sum.

4 Docket # 6-1, p. 1.

5 Paramount to the Notice of Termination was a general release attachment (the “General
6 Release”) Gautier had to sign in the same prescribed period of time, or else she “[would] not
7 be eligible for Basic Severance or Supplemental Severance.” Id.³ In fact, per the Notice of
8 Termination, failure to sign the General Release would entail that she would receive no post-
9 termination benefits. Id. The General Release listed a plethora of employment-related statutes
10 that Gautier relinquished “[i]n consideration of the execution of and [Gautier’s] compliance
11 with the [General Release]” Id., p. 7-8. One of the laws Gautier “waived” was ERISA; in
12 fact, this is the only instance where the acronym “ERISA” appears in the Notice of Termination
13 and its attachments. Further, the General Release provided that it would “[b]e governed by the
14 laws of the Commonwealth of Puerto Rico” Id., p. 9.

15 The severance worksheet attachment (the “Severance Worksheet”) in turn provided for
16 the simple tabulation of basic and supplemental severance, see id., p. 5, both of which were
17 calculated by a mathematical formula. For instance, “[b]asic pay [was] [Gautier’s] weekly base
18 rate of pay at [her] termination date, including salary reductions . . . , and excluding any overtime
19 pay, any individual sales bonuses or other additional incentive payments.” Id. Gautier’s
20 Supplemental Severance, meanwhile, was calculated based on three months of salary plus two
21 weeks pay for each full year of service. In short, her severance pay yielded \$189,838 in
22 supplemental severance and \$4,632 as basic severance, for a total of \$194,271. Per the
23 Severance Pay Worksheet, Bristol’s obligation to make severance payments ran from May 19,
24 2010 to November 9, 2010. Id.

25
26 ³ The General Release gave Gautier twenty one days as opposed to the fourteen days alleged in
the complaint. Docket # 6-1, p. 7.

3 Both parties signed the Severance Agreement in early May 2010 and thereafter Bristol
4 started making the corresponding severance payments. But on July 14, 2010, the Company,
5 through Beatriz B. Sanabria, sent a letter to Gautier where it “temporarily” suspended her
6 severance payments, citing a “system error” that miscalculated her supplemental severance.
7 Docket # 6-1, p. 11.⁴ The Company stated that the “correct” amount was \$68,102: over a sixty
8 percent reduction from the original \$194,271 it had agreed to. Id. Bristol also provided Gautier
9 with a new “severance package,” (the “New Agreement”), which incorporated the referenced
10 reduction. This time, however, Bristol gave Gautier forty five days to consider the New
11 Agreement. And, as was the case with the Severance Agreement, failure to sign and timely
12 return the New Agreement would entail that Bristol would no longer “[m]ake any further
13 severance payments.” Id.

14 According to the complaint, in late August 2010, the Company froze its severance
15 payments, having paid then \$88,936 of the \$194,271 it had bound itself to pay. Docket # 59, ¶¶
16 62-64. Then, on August 23, 2010 Gautier, through counsel, sent a letter to Sanabria rejecting
17 the New Agreement and demanding compliance with the Severance Agreement contract signed
18 in May 2010. Docket # 6-1, p. 25.⁵

19
20 ⁴ Apparently, Rosa Sanabria-Nazario and Beatriz B. Sanabria, although with purportedly
21 different names, appear to be one and the same: the Director of Human Resources. See Docket # 6-1
pp. 4 & 11.

22 ⁵ In pertinent part, such letter stated as follows:

23 [Gautier] is hereby rejecting the . . . “new offer” . . . [She] does not accept
24 [Bristol’s] proposal to cancel or change the contract that both parties already [had]
25 agreed to and signed [in] May 2010. It is [Gautier’s] position that there is a valid
26 and binding contract agreed upon and signed by both parties. . . . The [Severance
Agreement] . . . as well as its attachments are documents prepared, in its entirety,
by [Bristol]. The company had more than enough opportunity to prepare, discuss,
calculate . . . , and verify the information and amounts included in said documents,

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2 A new player emerged on September 7, 2010, when the heretofore nonexistent Plan
3 Administrator of the Bristol-Myers Squibb Puerto Rico, Inc. Severance Plan (the “Severance
4 Plan”), through counsel, replied to Gautier’s letter rejecting the New Agreement. Docket # 24-1,
5 p. 1. Enter ERISA: the Plan Administrator stated that Gautier’s letter “[h]a[d] been deemed by
6 [it] as a first-level appeal under the [Severance] Plan, and [would] be handled as such.” Id.
7 Noting that Gautier’s claims were controlled by ERISA, the Administrator gave Gautier until
8 November 24, 2010 to submit additional comments, arguments or evidence sustaining her
9 position. Id.

10 An exchange of correspondence ensued between the Administrator and Gautier’s
11 counsel. Gautier reiterated that her claims were directed at Bristol for the alleged contractual
12 breach of the Severance Agreement, clarifying in turn that such cause of action had no relation
13 to ERISA, Docket # 24-2, while the Plan Administrator insisted that ERISA controlled the
14 parties’ dispute. Docket # 24-3. Things unraveled and Gautier filed suit in state court on
15 December 30, 2010, seeking damages for Bristol’s alleged noncompliance with the payments
16 set forth in the Severance Agreement, i.e., the amount agreed to in May 2010. See generally
17 Docket # 1-1.

18 Then, on February 11, 2011, Bristol filed a timely Notice of Removal (Docket # 1) before
19 this court, arguing that because Gautier sought to recover benefits pursuant to an ERISA plan,
20 removal was proper. A month later, Gautier filed a motion to remand to state court (Docket #
21 12), maintaining that (1) the complaint on its face made no reference to ERISA, id., ¶¶ 22-35;
22 and (2) her Severance Agreement did not constitute an ERISA plan, id., at ¶¶ 46-67. On June
23

24 prior to making the offering and . . . signing of said contract. Therefore, if there
25 was any discrepancy, it was due only to [Bristol’s] actions or omissions.

26 Id.

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20, 2011, the Court entertained these issues, framing the controversy as follows: (1) is the
 3 Severance Agreement between Bristol and Gautier part of an employee benefit plan?; (2) if so,
 4 does the “complete preemption” doctrine apply? Gautier-Figueroa, 792 F.Supp.2d at 242.
 5

6 In answering the first question in the affirmative, this court stated: “the [Severance] Plan
 7 is the kind of ongoing, centrally administered, bureaucratic behemoth whose beneficiaries
 8 Congress intended to inoculate from multifarious state legislation pursuant to its Commerce
 9 Clause powers.” Id. at 244 (citations omitted). Because Gautier sought to recover benefits due
 10 to her under the Severance Plan, the Court reasoned, her cause of action “[f]ell directly under
 11 § 502(a)(1)(B) of ERISA.” Id. (citation omitted). Ultimately, this court held that complete
 12 preemption applied, and consequently, removal had been proper. Id. (citations omitted).
 13

14 Following an active motion practice, the Court entered an Order on November 4, 2011,
 15 asking Bristol to show cause as to why it should not reconsider its June 20, 2011 Opinion and
 16 Order.⁶ In pertinent part, the Order stated:

17 Absent from that opinion . . . were important factors that could
 18 change the outcome of this case, potentially depriving this Court’s
 19 jurisdiction. For example, whether a “one-person” contract such as the one
 present here, constitutes an ERISA plan; the issue of whether the Gautier’s
 severance “plan” created and imposed upon Bristol an administrative
 burden substantial enough to invoke ERISA status was likewise sidelined.
 (citing, *inter alia*, D’Oliviera v. Rare Hospitality Intern., Inc., 150
 F.Supp.2d 346, 353 (D.R.I. 2001). . . .

20 * * *

21 Furthermore, “[f]rom a reasonable employee’s point-of-view, the
 22 plan might not appear to be an ‘expressed intention by the employers to
 23 provide benefits on a regular and long term basis,’ but a temporary program
 24 ‘solely for the purpose of employee attrition.’” De Jesus v. Wyeth
 25 Pharmaceuticals Co., No. 09-1353, 2009 WL 3048415, at *6 (D.P.R. Sept.
 26

24
 25 ⁶ The Company moved to amend the Case Management Order, arguing that “[d]iscovery, pretrial
 26 and trial proceedings are inapposite to the adjudication of this case.” Docket # 25, p. 1. Further, the
 Company moved to dismiss, alleging among other grounds, that Gautier failed to exhaust the requisite
 administrative remedies prior to filing suit. Docket # 71, p. 18.

3 16, 2009) (citations omitted). The issue of whether the severance plan's
4 "benefit obligations are merely a one-shot, take-it-or-leave-it incentive . . .," *id.* at *5, was likewise ignored. See also Young v. Wash. Gas Light Co.,
5 206 F.3d 1200, 1203-04 (D.C.Cir. 2000) (holding that ERISA did not apply
to a severance plan when "the determinations of eligibility and the amount
of the benefits to be paid were purely mechanical").

6 Docket # 51, p. 2.

7 Bristol timely complied with the Court's Show Cause Order. Docket # 56-1. Gautier
8 responded and the Company replied. In a nutshell, Gautier contends the Severance Plan in this
9 case does not constitute an ERISA plan because it required no "ongoing administrative
10 scheme." Docket # 62, p. 8. The Company, on the other hand, contends that the severance
11 benefits exist solely because of the Severance Plan, which in turn requires an administrative
12 apparatus.

13 **Standard of Review**

14 Because federal courts are the sole guardians of their limited jurisdiction, they have an
15 obligation to examine their subject-matter jurisdiction *sua sponte* at all stages of the litigation.
16 E.g., American Policyholders Ins. Co. v. Nyacol Products, Inc., 989 F.2d 1256, 1258 (1st Cir.
17 1993) ("A federal court is under an unflagging duty to ensure that it has jurisdiction over the
18 subject matter of the cases it proposes to adjudicate."). Even if the parties "have disclaimed or
19 have not presented" issues that go to a court's subject-matter jurisdiction, courts are
20 nevertheless obligated to consider them on their own accord. Gonzalez v. Thaler, 565 U.S.
21 —, —, 132 S.Ct. 641, 648 (2012) (citing United States v. Cotton, 535 U.S. 625, 630, 122
22 S.Ct. 1781, 152 L.Ed.2d 860 (2002)). As a corollary of this jurisdictional duty, federal courts
23 must, on their own initiative, "[i]nquire into [their] jurisdiction in removed cases and remand
24 the same to the local courts for lack of it." Gonzalez-Roman v. Federal Land Bank of Baltimore,
25 303 F.Supp. 482, 483 (D.P.R. 1969) (citations omitted).

3 Against this backdrop, it is common ground that a suit filed in state court, founded on
4 a claim arising under federal law, may be removed to the District Court, irrespective of the
5 parties' residence. 28 U.S.C. § 1441(b). But a cause of action arises under federal law only
6 “[w]hen the plaintiff's statement of his own cause of action shows that it is based upon [federal
7 law] or [the] Constitution.” Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 152, 29
8 S.Ct. 42, 43, 53 L.Ed. 126 (1908). Under this well-pleaded complaint rule, the fact that a
9 defense to the plaintiff's cause of action may involve federal law is insufficient grounds for
10 removal. Id. However, “a plaintiff may not defeat removal by omitting to plead necessary
11 federal questions.” Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 22,
12 103 S.Ct. 2841, 2853, 77 L.Ed.2d 420 (1983) (citations omitted).

13 Nevertheless, if a court finds that “a plaintiff has ‘artfully pleaded’ claims in this fashion,
14 it may uphold removal even though no federal question appears on the face of the plaintiff's
15 complaint.” Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 475, 118 S.Ct. 921, 925, 139
16 L.Ed.2d 912 (1998). Once a suit has been removed, the law provides for remand “if ‘the case
17 was removed improvidently and without jurisdiction.’” Ochoa Realty Corp. v. Faria, 815 F.2d
18 812, 815 (1st Cir. 1987) (citation omitted); 28 U.S.C. § 1447(c) (“If at any time before final
19 judgment it appears that the district court lacks subject matter jurisdiction, the case shall be
20 remanded [to the Commonwealth court.”]).

21 **Applicable Law and Analysis**

22 *Whether the Severance “Plan” falls under the purview of ERISA*

23 Congress enacted ERISA to guarantee “[t]hat employees would receive the benefits they
24 had earned, but Congress *did not require employers to establish benefit plans in the first place.*”
25 Conkright v. Frommert, — U.S. —, 130 S.Ct. 1640, 1658, 176 L.Ed.2d 469 (2010) (citing
26 Lockheed Corp. v. Spink, 517 U.S. 882, 887, 116 S.Ct. 1783, 135 L.Ed.2d 153 (1996)

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2 (emphasis added)); Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 113, 109 S.Ct. 948,
 3 956, 103 L.Ed.2d 80 (1989) (“ERISA was enacted to promote the interest of employees and
 4 their beneficiaries in employer benefit plans and to protect contractually defined benefits.”)
 5 (citations and internal quotation marks omitted); see also H.R. Rep. No. 93-533 (1973), as
 6 reprinted in 1974 U.S.C.C.A.N. 4639, 4639 (“The primary purpose of [ERISA] is the protection
 7 of individual pension rights . . .”). With ERISA, moreover, Congress sought to mitigate the
 8 administrative burden associated with an employee benefit plan, providing a “uniform set of
 9 administrative procedures governed by a single set of regulations.” Fort Halifax Packing Co.
 10 v. Coyne, 482 U.S. 1, 11 107 S.Ct. 2211, L.Ed.2d 1 (1987). Such framework “safeguard[s]
 11 employee interests by reducing the threat of abuse or mismanagement of funds.” O’Connor v.
 12 Commonwealth Gas Co., 251 F.3d 262, 266 (1st Cir. 2001) (citing Mass. v. Morash, 490 U.S.
 13 107, 115 (1989) (internal quotation marks omitted)).

14 Under ERISA, an employee benefit plan can constitute an employee welfare benefit plan,
 15 29 U.S.C.A. § 1002(1), an employee pension benefit plan, 29 U.S.C.A. § 1002(2), or both, 29
 16 U.S.C.A. § 1002(3).⁷ Pursuant to the Labor Department regulations, severance pay plans or
 17 severance arrangements—payments made by employers to employees who are involuntarily
 18

20 ⁷ ERISA defines an “employee welfare benefit plan” as

21 [a]ny plan, fund, or program which was heretofore or is hereafter established or
 22 maintained by an employer or by an employee organization, or by both, to the
 23 extent that such plan, fund, or program was established or is maintained for the
 24 purpose of providing for its participants or their beneficiaries, through the
 25 purchase of insurance or otherwise, (A) medical, surgical, or hospital care or
 26 benefits, or benefits in the event of sickness, accident, disability, death or
 unemployment, or vacation benefits, apprenticeship or other training programs,
 or day care centers, scholarship funds, or prepaid legal services . . .

29 U.S.C. § 1002(1).

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2 terminated—*may* be treated as employee welfare benefit plans, rather than as pension plans. 29
 3 U.S.C.A. § 1051

4 ERISA need not always govern a severance pay plan, however: merely labeling a benefit
 5 program as such does not automatically turn it into an ERISA plan, see e.g., O'Connor, 251 F.3d
 6 at 266, which is why courts have consistently reiterated that “[t]he ERISA statute is fairly broad
 7 and its terms are defined ambiguously, if at all, leaving the task of providing a clearer
 8 interpretation of the statutory provisions to the courts.” D'Oliviera, 150 F.Supp.2d at 350
 9 (citation omitted); Belanger v. Wyman-sGordan Co., 71 F.3d 451, 454 (1st Cir. 1995) (“The text
 10 of ERISA itself affords scant guidance as to what constitutes a covered ‘plan.’”)⁸

11 In determining whether the Severance Plan is a covered ERISA plan, “[t]he beacon by
 12 which [courts] must steer is Fort HalifaxId. There, the Supreme Court recognized ERISA’s
 13 statutory vacuum. 482 U.S. at 8, 107 S.Ct. at 2216, L.Ed.2d 1. And, giving meaning to ERISA’s
 14 enigmatic language, the Court reasoned that because ERISA centers on the administrative
 15 integrity of benefit plans, only those plans requiring ongoing administrative activity fall under
 16 the gamut of ERISA insofar as they are subjected to employer abuse. See id. at 16. In deciding
 17 that a Maine statute requiring the payment of a severance benefit by an employer who relocated
 18 did not amount to a “plan” for ERISA purposes, the Fort Halifax Court held:

19 The requirement of a one-time, lump-sum payment triggered by a
 20 single event requires no administrative scheme whatsoever to meet the
 21 employer’s obligation. The employer assumes no responsibility to pay
 22 benefits on a regular basis, and thus faces no periodic demands on its assets
 23 that create a need for financial coordination and control. Rather, the
 24 employer’s obligation is predicated on the occurrence of a single
 25 contingency that may never materialize. . . . To do little more than write a

26 ⁸ Hence, “[a]ttention to purpose is particularly necessary in this case because the terms
 27 ‘employee benefit plan’ and ‘plan’ are defined only tautologically in the statute, each being described
 28 as ‘an employee welfare benefit plan or employee pension benefit plan or a plan which is both an
 29 employee welfare benefit plan and an employee pension benefit plan.’” Fort Halifax, 482 U.S. at 8, 107
 30 S.Ct. at 2216 (citation omitted).

3 check hardly constitutes the operation of a benefit plan. Once this single
 4 event is over, the employer has no further responsibility. The theoretical
 5 possibility of a one-time obligation in the future simply creates no need for
 6 an ongoing administrative program for processing claims and paying
 7 benefits.

8 Id. at 12, 107 S.Ct. at 2218.

9 In a series of post-Fort Halifax cases, the First Circuit has had the opportunity to shed
 10 more light on what determines whether a given program falls under ERISA. The first of these
 11 was Simas v. Quaker Fabric Corp., 6 F.3d 849, 852-54 (1st Cir. 1993), where the Court of
 12 Appeals held that a “tin parachute statute,” which provided severance pay for employees who
 13 lost their jobs following corporate takeovers, was preempted by ERISA because

14 [t]he Massachusetts employer *needed* some ongoing administrative
 15 mechanism for determining, as to each employee discharged within two
 16 years after the takeover, whether the employee was discharged within the
 17 several time frames fixed by the tin parachute statute and whether the
 18 employee was discharged for cause or is otherwise ineligible for
 19 unemployment compensation under Massachusetts law . . . *for at least two*
 20 *years after the takeover, and probably beyond that point as to disputed*
 21 *terminations, the employer would have to maintain records, apply the “for*
 22 *cause” criteria, and make payments or dispute the obligation.*

23 Id. (emphasis added). The Simas court, moreover, observed that to deem a severance regime a
 24 “plan” within the meaning of ERISA, courts must consider the extent and complexity of
 25 administrative obligations of the program in question. Id. at 853.

26 Two years after deciding Simas, the First Circuit resolved Belanger where it construed
 27 Fort Falifax as mandating that to be considered a “plan” for purposes of ERISA, the program
 28 must “[i]nvolve[] the undertaking of continuing administrative and financial obligations by the
 29 employer to the behoof of employees or their beneficiaries.” 71 F.3d at 454. In Belanger, a
 30 group of employees who accepted an early-retirement severance incentive sued their former
 31 employer after learning the latter had instituted a more generous package. Id. at 453. Holding
 32 that such severance incentives, based on years of service, did not comprise an ERISA plan, the

2 court concluded that the employer “required no complicated administrative apparatus either to
3 calculate or to distribute the promised benefit.” Id. at 455. The fact that the company made a
4 succession of offers over a period of four years—as opposed to a “lone offer”—did not change
5 the result. Id.

6 Rodowicz v. Mass. Mut. Life Ins. Co., 192 F.3d 162, 167 (1st Cir.1999) came next.
7 There, the First Circuit was confronted with another voluntary termination program, where the
8 severance payments (which the employee could elect to receive as a lump-sum payment or
9 through weekly payments) were also calculated by multiplying a number of weeks’ salary by
10 years of service. Id. The benefits were offered to most employees during a five-week window
11 and were conditioned on the employer’s ability to defer retirement for up to six months. Holding
12 that the plan in Rodowicz fell outside of ERISA’s purview, the court held:
13

14 [The plan] did not constitute an ERISA “plan.” True, the VTP
15 authorized certain exclusions and deferrals, as well as appeals by
16 disappointed employees, making it somewhat less mechanical and
17 unthinking than the Maine statutory scheme in Fort Halifax and the
18 one-time payment schemes in Belanger. Yet, as the district court found, the
19 VTP did not call for the sort of ongoing, individualized determinations
20 necessitated by the “tin parachute” statute addressed in Simas. . . .

21 Id. at 171-72 (citations omitted).

22 In O’Connor, the First Circuit’s latest guidance on this area of law, a Personnel
23 Reduction Program (PRP), a type early retirement incentive, was at issue. 251 F.3d at 265. The
24 PRP, which was offered to all non-officer employees during a fifteen-week period, contained
25 the following benefits for employees who opted to retire: a severance bonus, pension credit,
26 payment of COBRA premiums, and reimbursement for educational assistance and outplacement
services. Id. After reminding that “[a] given plan must be evaluated in light of Congress’
purposes in enacting ERISA[,]” id. at 266 (citation omitted), it made pellucid that courts must
examine

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the nature and extent of an employer's benefit obligations. Those obligations are the touchstone of the determination: if they require an ongoing administrative scheme that is subject to mismanagement, then they will more likely constitute an ERISA plan; but if the benefit obligations are merely a one-shot, take-it-or-leave-it incentive, they are less likely to be covered.

Id. at 267 (citations and internal quotation marks omitted). Ultimately, the First Circuit held that the PRP fell “on the non-ERISA side of the line” Id. at 268-69. Such conclusion stemmed principally from the court’s determination that the severance provision, the “primary component of the PRP,” neither required employer’s discretion nor mandated a complicated administrative scheme subject to mismanagement. See id. at 267-68.

Before moving along, it is essential to keep in mind that because “Congress [only] pre-empted state laws relating to *plans*, rather than simply to *benefits*.” Fort Halifax, 482 U.S. at 11-12, 107 S.Ct. 2211(emphasis in original), courts must differentiate between plans, under which benefits are distributed, and benefits because “[o]nly ‘plans involve administrative activity potentially subject to employer abuse.’” Id. at 16. In other words, merely providing employees with benefits is not necessarily indicative of the existence of a plan under ERISA. Hence, the Court will comb the record to ascertain whether the Severance Plan truly falls under ERISA’s purview.

The Opinion and Order of June 20, 2011

As previously indicated, in its Opinion and Order of June 20, 2011, this court concluded that the Severance Plan fell under ERISA. In so doing, it held, without digressing, that the Severance Plan required an ongoing administration of a plan because the benefits were provided as part of a preexisting and ongoing severance plan. Gautier-Figueroa, 792 F.Supp.2d. at 244-45. But the Court only dedicated a one-paragraph discussion to such analysis, correctly distinguishing *one* aspect of the packages implicated in *Fort Halifax*, *Rodowicz*, and *O'Connor*.

2 namely, that they were all “[p]ayments available to a large number of company employees for
3 a limited time period.” Id. (citations omitted). Put another way, this court circumscribed its
4 analysis to a sole factor: the preexistence of the Severance Plan.

5 This court, however, did not have the opportunity to determine whether the severance
6 benefits, based on all pertinent facts, *justified* and *required* the establishment of an ongoing
7 plan. After all, the “[i]nquiry into whether an employee welfare benefit plan may be classified
8 as an ERISA plan requires a fact-intensive application of several factors” D’Oliviera, 150
9 F.Supp.2d at 351 (citing, *inter alia*, Belanger, 71 F.3d at 455); Demars v. CIGNA, Corp., 173
10 F.3d 443, 446 (1st Cir. 1999) (noting that no single act of the employer is indicative of an
11 ERISA-regulated plan). The Court will thus proceed to “[e]valuate a purported plan like the
12 [Severance Plan] as a unified whole.” O’Connor, 251 F.3d at 267.

13 The Court begins its analysis with an affidavit included in Bristol’s show cause response,
14 stating the Severance Plan has been in place since 2009 and “[h]as been used to provide
15 severance benefits in connection with terminations of multiple employees at all of Bristol’s
16 affiliates *in Puerto Rico* since its inception.” Docket # 56-2, p. 1. (emphasis added). At the
17 outset, because the Severance Plan is engineered to apply only in Puerto Rico, it stands
18 incapable “[o]f applying uniformly in all jurisdictions where the employer might operate.”
19 Simas, 6 F.3d at 852 (quoting Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 142, 111 S.Ct.
20 478, 484, 112 L.Ed.2d 474 (1990)). As noted before, Congress enacted the ERISA to “ensure
21 that plans and plan sponsors would be subject to a uniform body of benefits law . . . [so as to]
22 minimize the administrative and financial burden of complying with conflicting directives
23 among States or between States and the Federal Government.” Ingersoll-Rand Co., 498 U.S. at
24 142, 111 S.Ct. at 78; Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 105 n. 25, 103 S.Ct. 2890,
25 2904 n. 25, 77 L.Ed.2d 490 (1983) (“Obligating the employer to satisfy the varied and perhaps
26

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2 conflicting requirements of particular state fair employment laws . . . would make administration
3 of a nationwide plan more difficult.”). But no such peril exists here; the Severance Plan is
4 narrowly tailored to apply exclusively to Puerto Rico.
5

6 Given such a confined and uncomplicated administrative scheme, ERISA’s broad
7 preemption provision appears unwarranted here. See Simas, 6 F.3d at 852; Fort Halifax, 482
8 U.S. at 10 (“ERISA’s comprehensive pre-emption of state law was meant to minimize this sort
9 of interference with the administration of employee benefit plans,” . . . so that employers
10 would not have to “administer their plans differently in each State in which they have
11 employees.”) (quoting Shaw, 463 U.S. at 105, 103 S.Ct. at 2904 (footnote omitted))). Because
12 no such “national” or uniform plan exists here, the Court feels compelled to reconsider its
13 description of the Severance Plan as a “[c]entrally administered, bureaucratic behemoth whose
14 beneficiaries Congress intended to inoculate from multifarious state legislation pursuant to its
15 Commerce Clause powers.” Gautier-Figueroa, 792 F.Supp.2d at 242.
16

17 *Au contraire*, in delimitating the Severance Plan to Puerto Rico, the Company not only
18 ran afoul of the above-referenced guiding principle behind Congress’s enactment of ERISA, but
19 more crucially, and as elucidated below, it bore upon itself no “[t]ask of coordinating complex
20 administrative activities.” Fort Halifax, 482 U.S. at 11, S.Ct. 2211 at 2217. Having made this
21 initial observation against finding an ERISA “plan,” the Court will nevertheless dissect the
Severance Plan to ascertain whether it can still pass muster.
22

Severance Bonus

23 Since the severance payments the Company unilaterally reduced here are both the
24 Severance Plan’s essence as well as Gautier’s patent motivation for subscribing the Severance
25 Agreement, the Court’ perusal of the purported plan begins here. As previously mentioned, on
26 May 5, 2010, Gautier released Bristol from any liability by means of the General Release; in

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2 consideration for her waiver, Bristol committed to pay her a total of \$194,271 in severance,
 3 among other marginal benefits the Court will examine later. Docket # 6-1, p. 5. The
 4 supplemental severance, the gist Gautier's severance benefits, was calculated by a mechanical,
 5 simple mathematical formula, based upon Gautier's three months of salary plus two weeks pay
 6 for each full year of service. See Docket # 15-4, p. 5. Bristol's responsibility for making
 7 severance payments to Gautier was both short and formalistic: her severance pay would run
 8 from *May 19, 2010 to November 9, 2010*; Bristol would simply temporarily continue making
 9 its *regular electronic payroll deposits* (see Docket # 6-1, p. 5)—albeit for much less than
 10 before—to Gautier's bank account.

11 For starters, the Company does not even argue that such payments were made “[o]ut of
 12 an segregated trust fund established for that purpose” Rosario-Cordero v. Crowley Towing
 13 & Transp. Co., 46 F.3d 120, 124 (1st Cir. 1995).⁹ Rather, Gautier's payments presumably
 14 originated from the Company's general assets, a practice that points to the Company's
 15 involvement—as opposed to the Plan Administrator—in the clerical task of administrating and
 16 paying such simple payments.¹⁰ In Rosario-Cordero, the First Circuit intimated that such
 17 straightforward enterprise entailed no risk of fund mismanagement. Cf. id. The Company's
 18 argument that it suspended Gautier's severance benefits in order to “safeguard the financial
 19

20

21 ⁹ Contrary to the employers in Rosario-Cordero, the Company, through Sanabria, is involved
 22 in “[t]he application for or the administration of the benefits.” Id. at 124. And, whereas in Rosario-
23 Cordero, where “[t]he payment of vacation benefits under the Plan rest[ed] on contingencies and
 24 processes entirely outside of the individual employers' and employees' control[,]” id., the severance
 25 payments here were triggered by the Company's decision to terminate an employee.

26 ¹⁰ See Docket # 32, ¶ 40 ([T]he severance payments received under the [Severance Agreement]
 27 were paid from the ‘cost center # 2994997.’ This is the *same ‘cost center’* from where [Gautier's]
 28 regular salary was paid in the manicuring department prior to her discharge.”). The Company does not
 29 rebut this contention.

2 integrity of employee's benefit fund" is unpersuasive in light of the above. Congress designed
3 ERISA, among other things, to protect employees from losing their promised benefits because
4 of employer mismanagement. E.g., Massachusetts v. Morash, 490 U.S. 107, 112-13, 109 S.Ct.
5 1668, 1671, 104 L.Ed.2d 98 (1989) (citations omitted). By transferring to Gautier the blame
6 for its fault in calculating her benefits, the Company seeks to turn such noble purpose on its
7 head. Even assuming, *arguendo*, that the Severance Plan mandated such "financial integrity"
8 here, it would nevertheless be ephemeral: on November 10, 2010, at the latest, Bristol would
9 have had made no further payments to Gautier. The same holds true for the other benefit
10 contained in the Summary Plan Description ("SPD"), as fully discussed below. What is more,
11 per the Severance Agreement as soon as Gautier obtained new employment—theoretically, the
12 day after her termination date, on May 20, 2010—her severance payments would automatically
13 end, and "[a]ny remaining severance [would be] payable to [her] as a *lump sum*" Docket
14 # 6-1, p. 5 (emphasis added). Such undertaking does not strike the Court as sufficiently
15 elaborate to fall under the purview of ERISA. See Fort Halifax, 482 U.S. at 12, 107 S.Ct. 2211
16 ("To do little more than write a check hardly constitutes the operation of a benefit plan. Once
17 this single event is over, the employer has no further responsibility.").

18 In the case at hand, as in Rodowicz, the purported ERISA plan "did not require that the
19 Company make a long-term financial commitment to any employee who chose to participate."
20 192 F.3d at 171. Further, the First Circuit has held, and this court so holds, that a series of
21 severance incentives like the ones offered to Gautier, also based on years of service, do not
22 constitute an ERISA plan because those payments "required no complicated administrative
23 apparatus either to calculate or to distribute the promised benefit." Belanger, 71 F.3d at 455.

24 The Company argues that Gautier's "[s]everance benefits were not paid in a lump sum,
25 but rather scheduled to be paid on a weekly basis through 25 weeks." Docket # 15, p. 9 (citation
26

2 omitted). As noted above, such contention is inaccurate, as the obtainment of new employment
3 triggered a lump-sum payment. At any rate, just because Bristol opted to pay Gautier's
4 severance benefits “[o]ver a period of time does not mean that the [Severance Plan] amounts
5 to an administrative scheme.” Tinoco v. Marine Chartering Co., Inc., 311 F.3d 617, 622 (5th
6 Cir. 2002); see also Delaye v. Agripac, Inc., 39 F.3d 235, 237 (9th Cir. 1994) (“Sending
7 [plaintiff] . . . a check every month plus continuing to pay [her] insurance premiums for the time
8 specified in the employment contract does not rise to the level of an ongoing administrative
9 scheme.”). The underlying rationale behind such reasoning is the lack of a long term, real
10 financial commitment by the employer for the benefit of an employee. Cf. Belanger, 71 F.3d at
11 454 (“Since a single-shot benefit requires no greater assurance than that the check will not
12 bounce, ERISA’s panoply of protections has virtually nothing to do with such a simple task.”)
13 (citation omitted). Like the severance at issue in O’Connor, Gautier’s severance bonus was
14 based on a rigid mathematical formula: Gautier’s tenure, calculated at the rate of two-and-a-half
15 week’s pay for each of the first ten years of service plus two weeks. In short, “[s]imple
16 arithmetic . . . dictated the amount of the bonus.” 251 F.3d at 269.

17 Particularly, where as here, such mechanical calculation was completed *before* Gautier
18 even signed the General Release and Severance Agreement, the Court finds that at its core, the
19 Severance Plan is a “take-it-or-leave-it incentive” that did not create the *need* for an ongoing
20 administrative burden. O’Connor, at 266-67; but cf. Ballesteros v. Bangor Hydro-Electric Co.,
21 463 F.Supp.2d 97, 100 n. 2 (D.Me. 2006) (holding that a severance package that included
22 *payment of retirement benefits*, triggered ERISA’s “[c]oncerns about an ongoing administrative
23 scheme that is subject to mismanagement as opposed to a ‘one-shot, take-it-or-leave-it’
24 incentive”) (citation and internal quotation marks omitted).

2 Bristol next contends that it “was obligated over a prolonged time period, even after
3 Gautier’s termination, to provide her with severance benefits.” Docket # 56-1, p. 7. But the
4 unambiguous terms of the SPD, which oblige Bristol financially for a *maximum* of six months,
5 bespeak otherwise. The case law, moreover, forecloses the Company’s unavailing argument,
6 recognizing that six months, by definition, is not a prolonged period of time capable of
7 compromising the employer’s financial integrity. See e.g., De Jesus, 2009 WL 3048415, at *6
8 (holding that a plan which provided payments to employees for over three months and up to one
9 year required no continuous administration); Wells v. General Motors Corp., 881 F.2d 166, 176
10 (5th Cir.1989) (finding that an early-retirement incentive program where payment could be
11 made in installments over a two-year period was not ongoing and there was no need for
12 continuing administration).

13 *Whether the benefits come due upon the occurrence of a single, unique event*

14 As previously indicated, in deeming the Severance Plan a “plan” under ERISA, the Court
15 over relied on the fact that there was not a single, unique event (such as a plant closure, see Fort
16 Halifax, 482 U.S. at 1, 107 S.Ct. 2211) triggering payment of benefits to all participants. Rather,
17 the Company contends that eligible participants would receive a severance package upon their
18 individual involuntary termination. Not surprisingly, the Company stresses the fact that
19 Severance Plan “[i]s not a temporary “one-time only” program, but an established Severance
20 Program continuously in place, for several years, for all eligible employees.” Docket 56-1, p.
21 7. This argument carries considerable weight as it militates in favor of finding an ERISA-
22 covered plan. But again, such factor, without more, is inconclusive. See Belanger, 71 F.3d at
23 455 (holding that no “authoritative checklist” exists for courts to consult in order to determine
24 whether an employer has established an ERISA program).

2 Be that as it may, common sense dictates the logic behind the “single event” factor; the
3 lack of such triggering event, *usually* implies that a company’s “plan” necessitates a complex,
4 administrative scheme subject to management abuse. But here, regardless that other employees
5 are also eligible and that the Severance Plan is triggered by successive terminations and not by
6 a single event, nothing changes that Bristol’s financial commitment with respect to such
7 terminated employee is minuscule. See James v. Fleet/Norstar Fin. Grp., 992 F.2d 463, 467 (2d
8 Cir.1993) (finding that payments made to employees with different termination dates and
9 eligibility criteria required only “simple arithmetical calculations.”). In the present case, there
10 are no long term benefits or investments that would impose upon Bristol a burden substantial
11 enough to reasonably mandate an ongoing administration scheme. See Belanger, 71 F.3d at 454
12 (“[O]ngoing investments . . . are uniquely vulnerable to employer abuse or employer
13 carelessness, and thus require ERISA’s special prophylaxis.”).

14 As fully discussed above, the Company’s commitment ends, at the longest, after a six-
15 month period. In this sense, *none* of ERISA’s regulatory safeguards exists here: (1) preventing
16 “[a]buses of the special responsibilities borne by those dealing with plans[,]” Fort Halifax, 482
17 U.S. at 15, 107 S.Ct. 2211 (citation omitted); (2) safeguarding “[e]mployees from ‘such abuses
18 as self-dealing, *imprudent investing*, and *misappropriation of plan funds[.]*’” id. (quoting
19 remarks of Representative Dent, 120 Cong. Rec. 29197 (1974) (emphasis added)); and (3)
20 providing employees with information ““covering in detail the fiscal operations of their plan.””
21 Id. at 16 (citation omitted). Here, however, the Company’s obligations simply “[d]id not involve
22 promises that had to be kept over a *lengthy period*, nor did the company thereby make any
23 *lasting* financial commitment of a type that might implicate ERISA’s substantive protections.”
24 Belanger, 71 F.3d at 455. (emphasis added).

2 This court, moreover, is persuaded by its sister court's analysis in D'Oliviera. Faced
3 with a similar "ongoing" severance plan established for the benefit of terminated employees,
4 the court held:

5 [T]he . . . plan is not an ERISA plan, *notwithstanding that new obligations*
6 *are made to employees as each is terminated*. In an earlier ruling the First
7 Circuit stated, "[b]ut so long as Fort Halifax prescribes a definition based
8 on the extent and complexity of administrative obligations, line drawing of
9 this kind is necessary and close cases will approach the line from both
sides." Therefore, *although employees will become eligible over time for*
various reasons, this Court concludes that *the administrative burden*
measured under this element is not significant enough in scope and degree
10 *to bring the original plan over the Fort Halifax threshold.*

11 150 F.Supp.2d at 352 (citing Simas, 6 F.3d at 854 (emphasis added)). After careful
12 consideration, the Court believes that such rationale controls the instant case.

13 *The Company's discretion in administering the "plan"*

14 The extent to which the employer must exercise discretion comprises a telling factor in
15 determining a question of ERISA applicability, as it evinces the complexity (or lack thereof) of
16 the program in question. O'Connor, 251 F.3d at 267 ("The determination of what constitutes
17 an ERISA plan thus turns most often on the degree of an employer's discretion in administering
18 the plan."). As aptly framed by Judge Coffin: "[w]here subjective judgments would call upon
19 the integrity of an employer's administration, the fiduciary duty imposed by ERISA is vital. But
20 where benefit obligations are administered by a mechanical formula that contemplates no
21 exercise of discretion, the need for ERISA's protections is diminished." Id.

22 In the case at hand, Bristol concedes that it has no discretion in determining the
23 employee's eligibility because all that is required is for the employee to be involuntarily
24 terminated and that he or she signs the General Release. See Docket # 56-1, p. 6. ("[N]either

25 Bristol nor the Plan Administrator have discretion to deny severance benefits to those

26 terminated employees who are eligible to them under the terms of the plan."). While Bristol

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2 does need to make an initial determination pursuant to certain boilerplate exclusions contained
3 in the Severance Plan—e.g., “for cause” criteria, Docket #15-4, pp. 3-4—the First Circuit has
4 deemed such “clerical” exercise insufficient to convert a plan into an ERISA-regulated plan.
5 O’Connor, F.3d at 269 (finding that for-cause determination did not involve the type of
6 discretionary determination subject to abuse that triggers an employer’s fiduciary obligation to
7 its beneficiaries). As Gautier correctly asserts, such objective, simple requirements were made
8 *before* the employee signed the Severance Agreement. There is simply no administration
9 *afterwards*. See D’Oliviera, 150 F.Supp.2d at 353 (“Once the guided ‘for cause’ determination
10 was made, no administrative apparatus, either to calculate or to distribute the promised benefit,
11 was involved. Only a simple, arithmetical application of the salary table was required.”).
12

13 This is bolstered by the fact that such process was evidently self-executing: as soon as
14 Gautier was terminated, an effortless check of her files would notify someone in the Human
15 Resources Department (e.g., Sanabria) whether the termination was with cause. If the
16 termination was unjustified, as was the case here, Sanabria simply tabulated the severance
17 payments based on an effortless mathematical formula dictated by the Severance Pay
18 Worksheet. Indeed, Sanabria signed both the Notice of Termination and the General Release.
19 Docket # 6-1, pp. 4 & 10. Such small clerical tasks, even in the aggregate, are insufficient to
20 impose upon Bristol a burden substantial enough to warrant ERISA’s aegis. D’Oliviera, 150
21 F.Supp.2d at 353 (holding that a determination of whether employees were terminated for cause
22 does not create an administrative burden substantial enough to invoke ERISA); Velarde v. Pace
23 Membership Warehouse, Inc., 105 F.3d 1313, 1317 (9th Cir. 1997) (finding that merely
24 determining whether an employee was terminated for cause is a “minimal quantum of discretion
25 [in]sufficient to turn a severance agreement into an ERISA plan”).
26

2 As in D'Oliviera, the administration of the “for cause” criteria here merely required a
3 straightforward application of the listed “acts of willful misconduct or activity deemed
4 detrimental to the interest of [the Company]” Docket # 15-4, p. 4. But, unlike the severance
5 package in Simas, the Severance Plan created no burdensome scheme for individualized
6 *discretionary* determinations of the eligibility of employees for retirement benefits. See 6 F.3d
7 at 853-54 (finding that an ERISA plan existed because the determination of whether an
8 employee was discharged for cause was “likely to provoke controversy and call for judgements
9 based on information well beyond the employee’s date of hiring and termination[,]” requiring
10 the employer to maintain records, and make payments or otherwise actively dispute the
11 obligation). Furthermore, the “eligibility” criteria outlined in the SPD, see Docket 15-4, pp. 3-4,
12 is unlike those found in Emmenegger v. Bull Moose Tube Co., 197 F.3d 929, 935 (8th Cir.1999)
13 (finding ERISA plan where eligibility for severance pay required employer to evaluate the
14 quality of employee’s service) or Schonholz v. Long Island Jewish Med. Ctr., 87 F.3d 72, 76 (2d
15 Cir.1996) (deeming ERISA implicated where employer determines whether fired employee had
16 made a “good faith effort” to secure employment elsewhere). In short, the mechanical, one-time,
17 initial determination involved here does not carry the day. See Rodowicz, 192 F.3d at 171
18 (finding that plan that contained exclusions was “somewhat less mechanical and unthinking”
19 but required no “individualized determinations”). Consequently, the level of subjective
20 assessment of cause here—an initial clerical determination devoid of any discretion—falls short
21 of the threshold required by the First Circuit in Simas.

22 The “appeal” mechanism the Company alleges Gautier failed to exhaust, also enlightens
23 the Court as to the Company’s evident lack of managerial discretion. According to the SPD,
24 such process worked the following way:

25
26 If upon the date of [Gautier’s] termination of employment [she] is not
advised that [she] will be eligible to receive severance payments from the

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Severance Plan, [Gautier's] claim for severance benefits under the Severance Plan is deemed denied." If a claim for severance benefits under the Severance Plan is denied in full or in part, [Gautier] may appeal the decision to the Plan Administrator. To appeal a decision, [she] must [mail] a written document . . . appealing the denial of the claim within 60 days after [Gautier's] termination of employment

6 Docket # 15-4, p. 13. How an aggrieved employee would find this out is a mystery, as the SPD
7 is supposedly disseminated *after* an employee’s “automatic” enrollment. Per the SPD, moreover,
8 the Company does not communicate a “denial” of benefits; thus the initial communication an
9 “eligible” employee received is the Notice of Termination Sanabria allegedly provided to
10 Gautier. Such standard process is uncharacteristic of an ERISA plan. See Rosario-Cordero, 46
11 F.3d at 124 (finding an ERISA plan when “[e]mployees seeking their vacation benefits must
12 apply directly to the Plan Administrator to obtain them”).¹¹

To recapitulate, the Severance Plan lacks managerial discretion as to eligibility because (1) it was open to all of Bristols's involuntarily terminated employees with limited, straightforward exclusions; (2) the calculation of the benefits was mechanical; (3) Bristol lacked discretion to exclude eligible employees; and (4) the benefits were offered by the Company in take-it-or-leave it terms as opposed to the employee's application to the Plan Administrator.

The “reasonable employee” perspective

19 In Belanger the First Circuit made clear that ERISA's applicability must be analyzed
20 from the employee's point of view: "[w]hether, in light of all the surrounding facts and
21 circumstances, a reasonable employee would perceive an ongoing commitment by the employer

2 to provide employee benefits. . . . Thus, evidence that an employer committed to provide
 3 long-term . . . benefits to its employees will often be telling.” 71 F.3d at 455 (citations omitted).
 4

5 To that effect, in its show cause order, the Court cited Dakota, Minnesota & Eastern R.R.
 6 Corp. v. Schieffer, 648 F.3d 935, 938 (8th Cir. 2011), a case of first impression, for the
 7 proposition that a “one-person” contract providing severance benefits to a single employee was
 8 not an ERISA employee welfare benefit plan. In its show cause response, Bristol clarifies that
 9 it “[h]as never argued that each Severance Agreement entered into with each participant
 10 constitutes an ERISA plan, but that the Severance Agreement is but one of the requirements set
 11 forth in the Severance Plan in order to obtain benefits under it.” Docket # 56-1, p. 6. Hence,
 12 it asserts that it enacted the Severance Plan, which is applicable to any eligible employee that
 13 signs the General Release, to provide benefits to all terminated employees, not just Gautier. Id.
 14 Nevertheless, “[B]ristol concedes that the Severance Agreement may be reasonably considered
 15 as a one-person contract, since it has to be signed by each terminated employee individually in
 16 order to be eligible to obtain the benefits under the Severance Plan.” Docket # 67, p. 5.

17 For the reasons set forth below, the Court agrees with Gautier that a reasonable employee
 18 would perceive that the Severance Agreement was a singular agreement between she and her
 19 former employer, offered exclusively to comply with Puerto Rico’s rather generous labor
 20 legislation in exchange for a waiver and release. Several reasons lend credence to this
 21 determination. First, according to the complaint, neither Sanabria nor Bristol provided Gautier
 22 with any “[E]RISA Plan and/or summarizing any benefits under ERISA, or any retirement
 23 plan.” Docket # 59, ¶ 19.¹² Second, while the Notice of Termination referred to the Severance

24

25 ¹² While the Company alleges that it provided Gautier with the SPD along with the Notice of
 26 Termination, such document is not part of the Notice of Termination’s attachments. Moreover, the
 record shows that the Company proved that it enclosed a copy of the SPD (Docket # 71-6, p. 20), for
 the first time, on September 7, 2010. E.g., Phelan v. Wyoming Associated Builders, 574 F.3d 1250,

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2 Plan multiple times, the term ERISA is nowhere to be found and no reference was made to any
3 administrative process whatsoever. Thus, a reasonable employee could construe such “plan” as
4 the collection of her severance benefits in a “package,” in exchange for her right to sue the
5 Company. Third, the General Release expressly provides that “[t]he parties agree that the
6 [Severance Agreement] shall be governed by the laws of the Commonwealth of Puerto Rico.
7 . . .” Docket #6-1, p. 9. And fourth, the acronym “ERISA” only appears once in the Notice of
8 Termination and its attachments: ironically, in the section where Gautier “waived” such cause
9 of action.

10 On this point Bristol incorrectly asserts that the severance benefits awarded to Gautier
11 exist “[e]xclusively, by virtue of an ERISA-covered severance plan,” Docket # 67, p. 5,
12 because such contention is contradicted by the Severance Worksheet’s plain language: “The
13 severance payments set forth [here] are designed to comply with any and all statutory
14 obligations that may arise out of an involuntary termination including, but not limited, to
15 statutory payments under Puerto Rico Act 80 . . .” Docket # 6-1, p. 6. It follows that Gautier,
16 who was involuntarily terminated, waived her Law 80 claims in consideration for the severance
17 payments Bristol now incorrectly seeks to condition on the existence of an ERISA plan. See In
18 re Palmas del Mar Properties, Inc., 932 F.Supp. 36, 39 (D.P.R. 1996) (construing the purpose
19 and history of Law 80 and describing the statute as “indemnity payment [that] is standard in all
20 cases. . . . [and] is nothing else but a punishment, a fixed remedy due to any employee unfairly
21 fired”); see also Orsini Garcia v. Srio. de Hacienda, 177 P.R. Dec. 596 (2009) (holding that the
22 remedies conferred by Law 80 cannot be waived by employees).

23
24
25
26 1559 (10th Cir. 2009) (interpreting “received” to mean “postmarked”). In any event, this issue is far
from determinative.

2 True, the severance payments are slightly more generous than the discharge indemnity
3 prescribed by Law 80, although the parties dispute whether the amount of money Bristol paid
4 Gautier (before freezing payments) satisfies what the state law mandates. The Court need not
5 resolve such dispute, as there is a more fundamental reason why the severance benefits
6 “awarded” to Gautier undoubtedly exist—Independently of the Severance Plan: namely, a *quid*
7 *pro quo*, whereby Gautier surrendered her right to file suit against the Company in connection
8 with her involuntary termination. See Docket # 6-1, p. 8. (“In consideration of the benefits that
9 you will receive in exchange for executing the [Severance] Agreement [and General Release]
10”); see also Orsini Garcia, 177 P.R. Dec. 596 & n. 58 (finding that a general release akin
11 to the one present here is a settlement agreement (*contrato de transaccion*)).

12 The existence of Gautier’s other benefits was thus predicated upon such contractual
13 arrangement, not on the Severance Plan or the Company’s altruism. The First Circuit has
14 cautioned that, when faced with these type of waivers, courts “[s]hould scrutinize an ostensible
15 waiver with care in order to ensure that it reflects the purposeful relinquishment of an
16 employee’s rights. Smart v. Gillette Co. Long-Term Disability Plan, 70 F.3d 173, 181 (1st Cir.
17 1995).

18 In light of the above, and seen from a reasonable employee’s perspective, the Court finds
19 that the Notice of Termination and the documents included therein, could plausibly be
20 interpreted as a one-person contract between the Company and Gautier.

21 *Other Benefits*

22 The other elements of the Severance Plan—all temporary and limited in nature—are the
23 following: Health Care Plan, Life Insurance, and the Employee Assistance Program (“EAP”).
24 Docket # 15-4, pp. 8-9. As to the Health Care Plan and Life Insurance, these were identical:
25 Gautier could remain in her Bristol-subsidized medical plan and a Bristol-provided limited life
26

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2 insurance until earlier of (1) six months measured from her termination date, (2) the day her
 3 severance payments end, or (3) the date Gautier begins new employment. Docket # 15-4, p. 8.
 4 Alternatively, Gautier could opt to continue coverage as required by COBRA.¹³ As was the case
 5 with the severance payments, theoretically speaking, if Gautier became employed on May 20,
 6 2010, the day after her termination, such benefits would cease forthright.
 7

8 In O'Connor, the First Circuit faced a similar situation, where a severance payments'
 9 mechanical and simple calculation outweighed non-severance benefits such as COBRA. 251
 10 F.3d at 270. Concluding that these kind of "minor perks" fell short of establishing an ERISA
 11 plan, the court held that

12 [t]he "Severance Plan" consists of a . . . lump-sum severance, the
 13 centerpiece of the incentive, plus a few enhanced benefits that otherwise
 14 would have been provided upon retirement under pre-existing ERISA plans,
 15 though without the added inducement . . . of COBRA premiums for a year.
 16 Although . . . these non-severance benefits might implicate ERISA to some
 17 extent, we are persuaded that they did not transform the [Severance Plan]
 18 as a whole into an ERISA-protected plan. These were minor perks attached
 19 to the severance. *Neither involved the kind of ongoing discretionary
 judgments that would sufficiently tax an employer's administrative integrity
 to warrant ERISA's prophylaxis*

20 Id. (emphasis added).¹⁴ Confronted with "plans" that temporarily extend the continuation of
 21 healthcare benefits, other Circuits have reached identical results. See e.g., Angst v. Mack

22 ¹³ COBRA is an acronym for Consolidated Omnibus Budget Reconciliation Act of 1985,
 23 Pub.L.No. 99-272, 100 Stat. 82. The COBRA provisions of ERISA relate to continuing health care
 24 coverage after an employee's termination. According to the Notice of Termination, *the COBRA
 25 benefits, which were to be paid in full by Gautier (the Company made no contributions), were not
 26 contingent upon the execution of the General Release*. Docket # 6-1, p. 2.

27 ¹⁴ According to the SPD, a "Rule of 70" benefit may apply. See Docket # 15-4. But this benefit,
 28 whose calculation is also mechanical, is disbursed and administered pursuant to the Bristol-Myers
 29 Squibb Retirement Income Plan, which is neither at issue here nor applicable to Gautier. Id. Hence, the
 30 Court will refrain from discussing the effect, if any, of these "Rule of 70 pension payments" on
 31 ERISA's applicability.

2
3 Trucks, Inc., 969 F.2d 1530, 1539 (3d Cir.1992) (holding that a plan’s “[p]rovision of a year of
4 continued benefits . . . did not require the creation of a new administrative scheme, and did not
5 materially alter an existing administrative scheme . . .”); Stokes v. Local 116 of Intern. Union
6 of Electronic, Elec., Salaried, Mach. and Furniture Workers, Civ. A. No. 92-3131, 1993 WL
7 23895, at *8 (E.D. Pa. Feb. 2, 1993) (finding that six months of continued health benefit did not
8 require the development of an administrative scheme).

9 As for the temporary (i.e., six months) continuation of Gautier’s life insurance coverage
10 as well as the EAP, the Court finds that these peripheral benefits imposed no burden upon the
11 Company’s administrative integrity. While the Company cites no case law on this front, the
12 Court found precedents defeating its proffer. See e.g., Arivella v. Alcatel-Lucent, 755 F. Supp.
13 2d 353, 364 (D. Mass. 2010) (“Continuation of the certain insurance benefits for one year and
14 the ability to roll the cash payments into an IRA do not strike the Court . . . as the sort of
15 ongoing administrative programs that would shift the [plan] into the ambit of ERISA.”); Kaelin
16 v. Tenneco, Inc., 28 F.Supp.2d 489, 491 (N.D.Ill. 1998) (determining that an employee
17 assistance program is not an ERISA plan); see also Taggart Corp. v. Life and Health Benefits
18 Admin., Inc., 617 F.2d 1208, 1211 (5th Cir.), cert. denied, 450 U.S. 1030, 101 S.Ct. 1739, 68
19 L.Ed.2d 225 (1980) (holding that an employer’s “bare purchase” of an insurance policy is
20 insufficient to establish an ERISA plan). Accordingly, these superficial, short-term “fringe
21 benefits,” even in the aggregate, fall short of converting the Severance Plan into an ERISA-
22 protected plan.

23 **Conclusion**

24 The collective effect of the temporary, minor benefits is insufficient to counteract the
25 non-discretionary attribute of the severance payments, the cardinal aspect of the “plan.” With
26 the exception of the “single event” factor, the administration of the benefits delineated in

3 Gautier's Severance Agreement, falls short of *requiring* the establishment of a distinct, ongoing
 4 and complicated administrative scheme subject to employer abuse. By like token, it cannot be
 5 gainsaid that the calculation, processing and administration of such benefits "[r]equire[d] the
 6 exercise of discretion to the degree that would justify saddling an employer with fiduciary
 7 responsibility *and foreclosing an employee's state claims.*" O'Connor, 251 F.3d at 271
 8 (footnote omitted; emphasis added).¹⁵

9 In sum, the Severance Plan (at least as applied to Gautier) is not an employee benefit
 10 plan within the scope of ERISA because it neither requires a prolonged administrative and
 11 financial apparatus nor imposes upon the Company a substantial burden, nor long term financial
 12 obligations with respect to its employees; and the Company lacks management discretion as to
 13 the employees' eligibility, among the other reasons articulated above. Because the Severance
 14 Plan is not a "plan" governed by ERISA, her claim that the Severance Agreement was breached
 15 does not present a federal question; any obligations Bristol may have with Gautier are
 16 contractual in nature, are governed by the terms of the Severance Agreement and do not
 17 implicate ERISA. Consequently, the Court lacks subject matter jurisdiction to entertain this
 18 action, and removal is, therefore, improper.

19

20

21 ¹⁵ While this court in no way discourages the formation of ERISA plans, it will not allow the
 22 Company to use ERISA as a pretext to foreclose Gautier's meritorious state law claims. Cf.
Metropolitan Life Ins. Co. v. Glenn, 554 U.S. 105, 113-14, 128 S.Ct. 2343, 171 L.Ed.2d 299 (2008)
 23 (noting that Congress' efforts not to discourage employees from creating benefit plans is "[o]utweighed
 24 by '[its] desire to offer employees enhanced protection for their benefits.'") (quoting Varity Corp. v.
 Howe, 516 U.S. 489, 497, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996)). Ironically, although Congress
 25 specifically crafted the preemption provision to protect employees, see e.g., Helfman v. GE Group Life
 Assur. Co., 573 F.3d 383, 391 (6th Cir. 2009), "[i]n practice [it] almost never comes up in a way that
 26 favors participants." Andrew Stumpff, Darkness at Noon: Judicial Interpretation May Have Made
 Things Worse for Benefit Plan Participants under Erisa than Had the Statute Never Been Enacted, 23
 St. Thomas L.Rev. 221, 229 (2011).

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2 There is one loose end: whether this court should entertain Gautier's state law claims
3 notwithstanding the absence of federal jurisdiction. None of the parties has addressed this issue.
4 Recently, in Redondo Const. Corp. v. Izquierdo, 662 F.3d 42, 49 (1st Cir. 2011), the First
5 Circuit recapitulated the well settled rule that "[i]f the federal claims are dismissed before trial,
6 the state claims should be dismissed as well." Id. (quoting United Mine Workers v. Gibbs,
7 383 U.S. 715, 726, 8s6 S.Ct. 1130, 16 L.Ed.2d 218 (1966)). It reminded, however, that such
8 general principle is no "mandatory rule to be applied inflexibly in all cases[,]" id. (citation
9 omitted), punctuating that "[d]istrict court[s] must exercise 'informed discretion' when deciding
10 whether to exercise supplemental jurisdiction over state law claims." Id. (quoting Roche v. John
11 Hancock Mut. Life Ins. Co., 81 F.3d 249, 256-57 (1st Cir. 1996)). Such determination
12 implicates a weighing of several factors: to wit, comity, judicial economy, convenience, and
13 fairness. Id. (citations omitted).

14 Having evaluated these elements, the Court declines to exercise supplemental
15 jurisdiction in this case. The parties have concentrated their efforts here mostly on ERISA-
16 related concerns; the Puerto Rico law issues, alas, have received no consideration. Further,
17 discovery has not yet commenced. Comity, meanwhile, will be served by permitting the
18 Commonwealth courts to resolve the important issues of contractual and employment state law
19 that abound here. For the reasons stated, Gautier's motion is **GRANTED** and this case is hereby
20 **REMANDED** to state court. Inasmuch as the Opinion and Order of June 20, 2011 contradicts
21 the conclusions reached here, it is hereby **SET ASIDE**.

22 **IT IS SO ORDERED.**

23 In San Juan, Puerto Rico, this 29th day of February, 2012.

24
25 S/ *Salvador E. Casellas*
26 SALVADOR E. CASELLAS
U.S. Senior District Judge